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United Nations

Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996

Twelfth session
(25 and 26 February and 6 March 2008)

General Assembly
Official Records
Sixty-third Session
Supplement No. 37 (A/63/37)

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Chapter I
Introduction

1. The twelfth session of the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996 was convened in accordance with paragraph 23 of General Assembly resolution 62/71. The Committee met at Headquarters on 25 and 26 February and on 6 March 2008.

2. In accordance with paragraph 9 of General Assembly resolution 51/210, the Ad Hoc Committee was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

3. At its 40th meeting, on 25 February 2008, the Committee decided that the members of the Bureau of the Committee at the previous session would continue to serve in their respective capacities. The Bureau was thus constituted as follows:

Chairman:
Rohan Perera (Sri Lanka)

Vice-Chairpersons:
Diego Malpede (Argentina)
Maria Telalian (Greece)
Sabelo Sivuyile Maqungo (South Africa)

Rapporteur:
Lublin Dilja (Albania)

4. Mahnoush H. Arsanjani, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee, assisted by George Korontzis as Deputy Secretary. The Codification Division of the Office of Legal Affairs provided the substantive services for the Committee.

5. At the same meeting, the Ad Hoc Committee adopted the following agenda (A/AC.252/L.17):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions contained in the mandate of the Ad Hoc Committee as set out in paragraph 22 of General Assembly resolution 62/71 of 6 December 2007.
6. Adoption of the report.

6. The Ad Hoc Committee had before it the report on its eleventh session,[1] containing, inter alia, a proposal by the coordinator relating to the preamble and article 18 of the draft comprehensive convention on international terrorism; and the

[1] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 37* (A/62/37).

report on its sixth session,[2] containing, inter alia, a discussion paper prepared by the Bureau on the preamble and article 1 of the draft comprehensive convention on international terrorism; informal texts of articles 2 and 2 bis, prepared by the coordinator; the texts of articles 3 to 17 bis and 20 to 27 prepared by the Friends of the Chairman; texts relating to article 18, one circulated by the coordinator for discussion and the other proposed by the States members of the Organization of the Islamic Conference; and a list of proposals made during the informal consultations on the preamble and article 1 appended to the report of the coordinator on the results of the informal consultations in the Ad Hoc Committee. The Committee also had before it two letters of 2005 from the Permanent Representative of Egypt to the United Nations concerning the convening of a high-level special session of the General Assembly on cooperation against terrorism.[3]

[2] Ibid., *Fifty-seventh Session, Supplement No. 37* (A/57/37 and Corr.1). See also the reports of the Ad Hoc Committee on its seventh to tenth sessions (*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 37* (A/58/37); ibid., *Fifty-ninth Session, Supplement No. 37* (A/59/37); ibid., *Sixtieth Session, Supplement No. 37* (A/60/37); and ibid., *Sixty-first Session, Supplement No. 37* (A/61/37)). See also the reports of the Working Group established at the fifty-fifth to sixtieth sessions of the General Assembly (A/C.6/55/L.2, A/C.6/56/L.9, A/C.6/57/L.9, A/C.6/58/L.10, A/C.6/59/L.10 and A/C.6/60/L.6). The summaries of the oral reports of the Chairman of the Working Group established at the sixty-first and sixty-second sessions are contained in documents A/C.6/61/SR.21 and A/C.6/62/SR.16, respectively.

[3] Letters dated 1 and 30 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General and the Chairman of the Sixth Committee, respectively (A/60/329 and A/C.6/60/2).

Chapter II
Proceedings

7. The Ad Hoc Committee held two plenary meetings: the 40th on 25 February and the 41st on 6 March 2008.

8. At the 40th meeting, the Ad Hoc Committee adopted its work programme and decided to proceed with discussions in informal consultations and informal contacts. At the same meeting, Ms. Telalian, Coordinator of the draft comprehensive convention, was requested to continue her consultations and contacts on the outstanding issues concerning the draft convention during the current session of the Committee. At the same meeting the Committee held a general exchange of views on the draft comprehensive convention and on the question of convening a high-level conference. An informal summary of those discussions, prepared by the Chairman, appears in annex I to the present report. The informal summary is intended for reference purposes only and not as a record of the discussions.

9. The informal consultations regarding the draft comprehensive convention on international terrorism were held on 25 February and informal contacts were held on 25 and 26 February and from 27 February to 5 March, on the sidelines of the session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. During the informal consultations, on 25 February, the Coordinator made a statement, reporting on the results of the informal contacts held intersessionally; and on 6 March, she made a statement on the informal contacts held during the current session. A summary of those reports appears in annex II to the present report, for reference purposes only and not as a record of discussions.

10. The informal consultations concerning the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations were held on 26 February. An informal summary of those discussions, prepared by the Chairman, appears in annex I to the present report. The informal summary is intended for reference purposes only and not as a record of the discussions.

11. At the same meeting, the Ad Hoc Committee adopted the report on its twelfth session.

Chapter III

Recommendation

12. At its 41st meeting, the Ad Hoc Committee decided to recommend that the Sixth Committee, at the sixty-third session of the General Assembly, establish a working group with a view to finalizing the draft comprehensive convention on international terrorism and continue to discuss the item included in its agenda by General Assembly resolution 54/110 concerning the question of convening a high-level conference under the auspices of the United Nations.

Annex I

Informal summary prepared by the Chairman on the exchange of views in plenary meeting and on the results of the informal consultations

A. General

1. During the general exchange of views at the 40th meeting of the Ad Hoc Committee, on 25 February 2008, delegations reaffirmed their unequivocal condemnation of international terrorism in all its forms and manifestations, committed by whomsoever, wherever and for whatever purposes. It was emphasized that international terrorism posed a threat to international peace and security, as well as to human life and dignity and to the consolidation of democracy. The continuing importance of the work of the United Nations system-wide, and of the General Assembly in particular, in combating terrorism was highlighted. In this regard, references were made to the landmark strides achieved thus far, including the 16 multilateral counter-terrorism instruments adopted under the United Nations auspices, the 2005 World Summit Outcome (General Assembly resolution 60/1), the United Nations Global Counter-Terrorism Strategy (resolution 60/288, annex), as well as the relevant Security Council resolutions. The importance of implementing the Global Counter-Terrorism Strategy through sustained and collaborative efforts of Member States was underlined. Some delegations also emphasized the necessity of strengthening international cooperation in the struggle against terrorism.

2. Delegations stressed that the fight against international terrorism should be conducted in conformity with international law, including the Charter of the United Nations, as well as relevant instruments concerning international human rights law, international humanitarian law and international refugee law. Some delegations emphasized that an enhanced dialogue among civilizations, including the positive role of mass media in that regard, could contribute to the common cause of eliminating terrorism. Such efforts would promote tolerance and understanding among peoples. It was also reiterated that any attempt to link terrorism with any religion, race, culture or ethnic origin should be rejected, as there was no religion or accepted religious doctrine which encouraged or inspired terrorism. Concern was expressed by some delegations over the use of double standards in the fight against international terrorism. The need to address the root causes of terrorism was also emphasized by some delegations.

B. Draft comprehensive convention on international terrorism

3. During the general exchange of views at the 40th meeting, delegations stressed the importance of finalizing the draft comprehensive convention on international terrorism, as it would be an effective tool for combating international terrorism, complementing the existing legal framework. They also reaffirmed their commitment to the current negotiating process and the early adoption of the draft comprehensive convention.

4. Some delegations observed that the draft comprehensive convention would not be the final answer or sole response of the international community to combating

international terrorism; rather it was intended to fill existing gaps and enhance cooperation among States in areas not yet covered by other legal instruments. It was also observed that the present draft text, having been refined over the years, preserved the integrity of international humanitarian law; it should not be considered to be an instrument by which to make changes to that law.

5. Some other delegations stressed the need for the comprehensive convention to provide for a clear legal definition of terrorism. It was added that such a definition should establish a clear distinction between acts of terrorism covered by the convention and the legitimate struggle of peoples in the exercise of their right to self-determination or against foreign occupation. Furthermore, some speakers considered that the comprehensive convention should include provisions relating to military activities not covered by international humanitarian law, and apply to individuals in a position to control or direct such military activities. The point was also made that the conclusion of the convention should not be at the risk of undermining the principle that terrorism cannot be justified for whatever purposes.

6. With regard to draft article 18, some delegations stated that the latest draft proposal by the Coordinator could be a sound basis for negotiating and reaching a consensus on the text, noting in particular that the proposal constituted a clarification of various aspects of the previous text of the draft article. Some other delegations recalled that they had already accepted the previous draft of the former Coordinator, and also encouraged all States to actively and constructively participate in the consultations on the outstanding issues, maintaining a focus on the scope of article 18. While some delegations reiterated the need to have unambiguous provisions, some other delegations observed that, even if certain terms appear to be vague and unclear, the rules of treaty interpretation would provide the necessary tools and sufficient guidance to effectively provide, in practice, clarity to terms that might seem ambiguous and open. It was stressed in this regard that the margin of interpretation narrowed considerably when the rules of treaty interpretation were applied, as required by international law.

7. Concerning the format of work in the Ad Hoc Committee, some delegations, while viewing the conduct of bilateral consultations as a useful additional tool in addressing the outstanding issues relating to the draft comprehensive convention, also reiterated the necessity of conducting negotiations multilaterally in a transparent and representative format. This point was echoed at the 41st meeting.

8. At the same (41st) meeting, some delegations reiterated their support for the proposed elements and considered that the current text of the draft convention constituted a good basis for a compromise solution. Some other delegations indicated that they continued to seriously consider all aspects of the proposed text and expressed the hope that, with sufficient efforts of all parties, the negotiations of the draft convention could be finalized before the end of the year. Yet, some other delegations, while remaining committed to the current process with a view to finding a solution to all outstanding issues, reconfirmed their previously preferred position relating to draft article 18. Support was also expressed for the convening of a working group during the Sixth Committee to continue the work of the Ad Hoc Committee with a view to concluding the draft convention.

C. Question of convening a high-level conference

9. In the informal consultations, on 26 February, Egypt, as sponsor delegation, reiterated that the convening of a high-level conference was important for several reasons. It would seek to address a myriad of issues concerning terrorism, including its root causes, the relationship between goals and means of combating terrorism, and the respect for the rule of law and human rights in this struggle. The conference could also provide a forum to elaborate a definition of terrorism and to identify practical ways of strengthening the central role of the United Nations in the fight against terrorism. The sponsor delegation recalled that the proposal had been endorsed by the Movement of Non-Aligned Countries, the Organization of the Islamic Conference, the African Union and the League of Arab States. It reiterated that the convening of the conference should not be tied to the completion of the work on the draft comprehensive convention. In this regard, it was stressed that some important issues to be addressed during the conference were not covered in the discussions on the draft comprehensive convention. Moreover, such a conference could provide a fresh impetus to efforts to complete the draft comprehensive convention.

10. During the 40th and 41st meetings of the Ad Hoc Committee, as well as during the informal consultations, some delegations reiterated their support for the convening of a high-level conference and stated that it should not be linked to the draft comprehensive convention. Some other delegations reiterated their support for the consideration of the proposal in principle. However, it was emphasized that the question should be considered after the finalization of the draft convention, which should remain the focus of the Committee. The view was also expressed that discussions on the draft comprehensive convention and the convening of a high-level conference could continue in parallel. Furthermore, support was expressed by some delegations for the elaboration of an international code of conduct in the fight against terrorism.

11. At the conclusion of the debate, the sponsor delegation requested that the issue of the convening of a high-level conference be kept under consideration.

Annex II

Reports on the informal contacts on the draft comprehensive convention on international terrorism

A. Summary of the briefing on the results of intersessional informal contacts

1. In her briefing on 25 February on the informal intersessional contacts, the Coordinator of the draft comprehensive convention, Maria Telalian (Greece), said that two rounds of bilateral contacts had been convened intersessionally, on 13 and 20 February 2008. On several occasions, she had also met informally with a number of delegations outside the framework of those scheduled contacts. The purpose of the bilateral contacts had been to afford delegations the opportunity to remain engaged, particularly in the light of the text containing elements of a package to resolve the outstanding issues surrounding the draft comprehensive convention, which had been presented during the 2007 session of the Ad Hoc Committee.

2. The Coordinator recalled that the proposal built upon already existing language and that the additional elements were presented with a view to seeking to bridge the gaps between divergent viewpoints. Explanations regarding the additional elements had already been offered in detail on several occasions (see in particular, A/C.6/62/SR.16). The Coordinator was encouraged by the continuing interest of delegations in the completion of the draft comprehensive convention, and was most appreciative to all delegations that had spared time to meet with and encouraged her in the concerted efforts to find a solution to the outstanding issues.

3. Most comments made during the bilateral contacts and informal meetings were offered with a view to gaining a better appreciation of the proposal, and those comments surrounded two aspects, namely the need to have a clear delineation between those activities governed by international humanitarian law and those covered by the draft convention and the question of possible impunity of military forces in peacetime.

4. With regard to the need for a clear delineation, the Coordinator recalled that exclusionary clauses already existed in several of the sectoral counter-terrorism instruments, including the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of Acts of Nuclear Terrorism. The proposed elements to draft article 18 were, in substance, very similar to those clauses but, in the light of the broader scope of the draft comprehensive convention, they sought to provide clarity and further guidance, including to those who might be responsible for implementing the sectoral conventions. The purpose of excluding certain activities was not to allow impunity but only to carve out from the scope of the convention certain activities regulated by other fields of law. Since the draft comprehensive convention would be implemented in the context of an overall international legal framework, the importance of preserving the integrity of those other fields of law had been recognized earlier on. It had also been recognized that the draft comprehensive convention, or the earlier conventions, should not attempt to rectify any perceived flaws or problems in such other fields of law, and in particular the complexity of problems that international humanitarian law was intended to confront. Such problems needed to be addressed in other forums and by the relevant law. The Coordinator nevertheless recalled that means and methods of

warfare were not unlimited. International humanitarian law provides principles that offer guidance to States in situations of armed conflict, many of which have been generally accepted, including the principle of the distinction of civilians and non-combatants from combatants, the principle of proportionality, and the principle of prohibition to employ means and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

5. The Coordinator pointed out that, already, paragraph 2 of draft article 18 provided a demarcation between what is covered in the draft comprehensive convention and the activities of armed forces during armed conflict, "as those activities are understood under international humanitarian law". The general "without prejudice" clause in the new paragraph 5 aimed to further clarify this delineation. It was reiterated that the term "lawful" in this context should be understood with its double negative connotation, that is "not unlawful acts", since international humanitarian law did not in a literal sense define which acts were "lawful", but which acts were prohibited. In view of the need to distinguish those acts that were "unlawful" under paragraph 1 of draft article 2, which provides that the convention only covers "unlawful" activities, the term "lawful" in paragraph 5 was used as being more appropriate in the circumstances. The addition of this term in paragraph 5 was not intended to broaden the categories of persons falling under the exclusionary clause. The aim of the paragraph was to ensure that international humanitarian law was not prejudiced by the draft convention, and that those who committed offences under that law were regulated by that law. The Coordinator also stressed that the draft convention was not intended to impose international humanitarian standards on States that would become parties to it if they were not bound by such standards. The draft convention was also not intended to supersede such obligations where they already existed.

6. With regard to the question of impunity, the Coordinator recalled that paragraph 3 of draft article 18, read together with paragraph 4, intended to close any gap in relation to the military forces of a State. It did not make lawful otherwise unlawful acts. It simply recognized that other laws apply in such circumstances and did not preclude prosecution under such laws. The new element, the reference to article 2 in paragraph 4 of draft article 18, together with the new preambular paragraph, only sought to accentuate that there is an inner core of conduct which, if committed, would constitute an offence which remained punishable irrespective of the regime that would apply. It was also stressed that a full understanding of draft article 18, whose constituent elements had to be read as a whole, would be incomplete without relating it to the other articles of the draft convention, in particular draft article 2, which in paragraph 1 provides for the purposes of the draft convention the criminal law definition of acts of terrorism. That paragraph contains two key phrases, namely "unlawful" conduct by "any person", which were decisive in understanding the scope of the convention *ratione personae*.

7. The Coordinator also expressed her concerns regarding what she sensed to be a certain reluctance to seize the moment and move ahead towards the completion of the draft convention. It was her sincere hope that the necessary will would be garnered to move ahead towards the conclusion of the draft comprehensive convention. She stressed that, legally, the solution that was currently on the table, which had emerged from intense informal consultations with delegations, was one that would overcome the hurdles that existed; it contained elements for a viable package to complete the draft convention if there was a wish to finalize it. Finally,

the Coordinator reiterated that the solutions that were being offered were embedded in the long negotiating history of the work done by the Committee since 1996.

B. Summary of the briefing on the results of informal contacts during the current session

8. In her briefing on 6 March on the informal contacts held during the current session, the Coordinator of the draft comprehensive convention stated that two rounds of informal contacts had been held, on 25 and 26 February 2008. In addition, she had also met informally with interested delegations, either bilaterally or in groups. The purpose of the informal contacts had been to provide delegations with an opportunity to engage further in discussions on the outstanding issues surrounding the draft comprehensive convention and to seek ways of moving the process forward, particularly in the light of the text containing elements of a package that was presented during the 2007 session of the Ad Hoc Committee.

9. The Coordinator reported that during the contacts, delegations had shared their hopes and concerns and that she had sought to offer clarifications on what was intended by the proposed elements of a package. She noted that delegations had continued to display a positive attitude. Their continued interest in completing the draft convention and their willingness to show flexibility in finding solutions to the outstanding issues surrounding draft article 18 on the basis of a package, was encouraging and pleasing. In particular, more and more delegations were expressing support for the proposed elements, which they considered constituted a viable and legally sound solution to completing the draft convention. She was also pleased that some other delegations had signalled an interest in seriously considering the proposed elements as part of an overall package which would lead to the completion of the text. Those delegations had conveyed that message in the hope that the package would facilitate the reaching of a consensus. Yet some other delegations, while remaining committed to the current process, had reconfirmed that their proposals remained on the table.

10. The Coordinator also referred to a tendency among certain delegations to read specific situations, events and circumstances into the proposed text, which she considered was a natural inclination. Consequently, some delegations found the elements not fully reflective of their concerns. To put matters in perspective, the Coordinator found it important to stress that the proposed elements were drafted in such a way as to project principles that clarify the relationship with, and safeguard the application of, other legal regimes, in particular, international humanitarian law. The draft convention would not exist in a legal vacuum, it would operate in the context of an overall international legal framework. Ultimately, it would be for the parties to the convention and consequently their judicial authorities to make interpretations in the light of the specific circumstances in each case in accordance with well-established canons of treaty interpretation.

11. Recalling that the draft convention was a criminal law enforcement instrument, the Coordinator stressed that parties to the convention would be responsible for its implementation in the context of other rules that form part of the international legal system. In any given situation, the parameters of consideration might be different. What was key for purposes of interpretation and application was the principle that international humanitarian law was not prejudiced by the convention nor did the convention seek to restrain the development of that law. She also reiterated that the

draft convention was not intended to impose international humanitarian standards on States which would become parties to it if they were not bound by such standards, neither did the convention supersede such obligations, where they already existed. Also key was the principle that there was no impunity in respect of military forces of a State which might commit offences that might be similar to the ones the convention proscribed as the latter would be prosecuted under other applicable laws. It was explained that paragraphs 1 to 5 of draft article 18 built some flesh around those principles.

12. The Coordinator reiterated her belief that legally the solution that was currently on the table was one that would overcome the difficulties that existed; it constituted elements of a viable package for the completion of the draft convention. She underscored the importance of political will to bring the process to the next level and conclude the work, which should not be considered an endless process or one that could start all over again. Such political will required an appreciation that the draft convention would operate against the background of other regimes which should be safeguarded to the extent that the international legal system allowed. The necessity to demonstrate a spirit of compromise and accommodation to achieve a positive outcome was also emphasized. The Coordinator was confident that the current session had generated momentum and a better appreciation of the proposed elements as a possible way forward; the months ahead would determine the future of the draft convention.

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